

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>MITCHELL J. HARB, JR.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>1:09CV766</b>
	)	
<b>STATE OF NORTH CAROLINA<sup>1</sup>,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER REQUIRING ANSWER FROM RESPONDENT**

Petitioner, a prisoner of the State of North Carolina, submitted a petition pursuant to 28 U.S.C. § 2254, together with the five dollar filing fee. The Clerk of Court received the submission on October 1, 2009, which Petitioner had dated as of September 29, 2009. Accordingly,

**IT IS ORDERED** that Respondent shall file an answer with this Court, pursuant to Rules 4 and 5, Rules Governing Section 2254 Cases, within forty (40) days from the entry of this Order.

/s/ Donald P. Dietrich  
**Donald P. Dietrich, U.S. Magistrate Judge**

October 15, 2009

---

<sup>1</sup>The Court notes that Petitioner has not named his custodian as the respondent. Rule 2, Rules Governing Section 2254 Cases, requires that the petition name the state officer having custody of the applicant as respondent. The Court takes judicial notice that a proper respondent for North Carolina state prisoners challenging their North Carolina judgment of conviction is the Secretary of the North Carolina Department of Correction. Naming the wrong custodian is a common point of confusion, and the Court assumes that Petitioner wishes to name the proper custodian as respondent. Accordingly, unless Petitioner objects within eleven days of the issuance of this Order, the petition is deemed from this point forward to be amended to name Alvin W. Keller, Jr., who is currently the Secretary of the North Carolina Department of Correction, as respondent.